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U S DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUN - 5 2012

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NOEL VELASQUEZ and CARLOS
RIVERA, individually and on behalf of all
others similarly situated,

LONG ISLAND OFFICE

MEMORANDUM AND ORDER

Plaintiffs,

CV 11-3892

-against-

(Wexler, J.)

DIGITAL PAGE, INC. d/b/a/, FUSION
WIRELESS; CELLULAR CONSULTANTS,
INC., d/b/a/, FUSION WIRELESS;
CELLULAR CONSULTANTS OF NASSAU,
INC., d/b/a/, FUSION WIRELESS; CELLULAR
CONSULTANTS OF NASSAU ST/1, d/b/a/,
FUSION WIRELESS; CELLULAR
CONSULTANTS OF FARMINGDALE,
d/b/a/, FUSION WIRELESS; BRANDON
HAENEL and ROBERT PACHTMAN,

Defendants.

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APPEARANCES:

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WEXLER, District Judge

This is a case brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 207 (the “FLSA”), and parallel provisions of New York State law, seeking overtime compensation against the Defendant employers. Plaintiffs Noel Velasquez (“Velasquez”) and Carlos Rivera (“Rivera”), commenced the action representing themselves, and seeking to represent a class of persons similarly situated.

Presently before the court is Defendants’ motion, pursuant to Rule 72 of the Federal Rules of Civil procedure, to set aside an order of Magistrate Judge A. Kathleen Tomlinson, dated April 26, 2012. (the “Order”). The Order denies, without prejudice, Plaintiff’s motion for a collective action, and directs Defendants to produce, inter alia, the names and last known addresses of certain employees. Defendants argue that the denial of the motion for a collective action should have been with prejudice.

Disposition of the Motion

The Order is a non-dispositive order. Pursuant to Rule 72 of the Federal Rules of Civil Procedure this court shall modify or set aside any part of the Order that is “clearly erroneous or contrary to law.” FRCP 72(a). This court has reviewed Defendants’ objections, the Order and the transcript of proceedings before Magistrate Judge Tomlinson, and concludes that the order appealed from should be affirmed.

Under the circumstances here, it was certainly appropriate and neither clearly erroneous nor contrary to law for the Magistrate Judge to deny the motion without prejudice to re-filing after obtaining additional evidentiary support. Accord Jenkins v. TJX Companies Inc., 2012 WL 1099964 *7 (E.D.N.Y. 2012). Accordingly, Defendants’ objections are hereby overruled and the

Order of Magistrate Judge Tomlinson is affirmed.

SO ORDERED

S/LP Wexler

LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Central Islip, New York
June 5, 2012